

AG Contract No.: KR04-0719TRN  
ADOT ECS File No: JPA 03-098  
Project No : HRF-YUM-0-793  
Project: 32<sup>nd</sup> Street  
Section: Avenue A to Avenue B  
TRACS No.: HF093 01C - (FY05)  
                  HF093 02C - (FY06)  
Budget Source Item No.: N/A  
HURF Exchange Program

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE CITY OF YUMA

THIS AGREEMENT is entered into 25th April, 2005, pursuant to Arizona Revised Statutes §§ 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF YUMA, ARIZONA, acting by and through its MAYOR and CITY COUNCIL (the "City").

### I. RECITALS

1. The State is empowered by Arizona Revised Statutes §§ 28-401 and 28-6993(g) to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.

3. The State has approved the exchange of \$211,500.00 Highway User Revenue Funds (HURF) in Fiscal Year 2005 to the City for the design and right-of-way acquisition preparatory to the reconstruction and widening of 32<sup>nd</sup> Street from Avenue A to Avenue B, and such funds will be repaid to the State by withholding from YUMA METROPOLITAN PLANNING ORGANIZATION (YMPO) federal funds and the obligation authority for federal funds in the amount of \$223,037.00 in Fiscal Year 2005.

4. The State has approved the exchange of \$720,000.00 Highway User Revenue Funds (HURF) in Fiscal Year 2006 to the City for the reconstruction and widening of 32<sup>nd</sup> Street from Avenue A to Avenue B, and such funds will be repaid to the State by withholding from YUMA METROPOLITAN PLANNING ORGANIZATION (YMPO) federal funds and the obligation authority for federal funds in the amount of \$759,275.00 in Fiscal Year 2006.

THEREFORE, in consideration of the mutual Agreements expressed herein, it is agreed as follows:

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NO. 27482

Filed with the Secretary of State

Date Filed: 04/25/05

Janice K. Brewer  
Secretary of State

By: Dan D. Greenwald

## **II. SCOPE OF WORK**

### **1. The City shall:**

- a. Provide design plans, specifications and such other contract documents and services required for construction bidding and construction.
- b. Provide the State documentation showing that the design and right-of-way acquisition have been completed prior to invoicing the State.
- c. Invoice the State for the costs of design and right-of-way acquisition in a total amount not to exceed \$211,500.00 for Fiscal Year 2005
- d. Invoice the State for thirty percent of the \$720,000.00 project construction cost for Fiscal Year 2006, upon award of the construction project.
- e. Invoice the State for thirty percent of the \$720,000.00 project construction cost for Fiscal Year 2006, at the thirty percent and sixty percent project construction completion stages.
- f. Upon completion, approve and accept the project as complete and provide maintenance. Provide the State with a letter documenting the notice of the approval and acceptance of the project.
- g. Invoice the State for the remaining ten percent of the \$720,000.00 project construction cost for Fiscal Year 2006, at the one hundred percent project construction completion stage after the City, YMPO, and the State (ADOT) representatives have completed final project review.

### **2. The State shall:**

- a. Within 30 days after receipt of an invoice and documentation showing the design and right-of-way acquisition have been completed, advance HURF funds in a total amount not to exceed \$211,500.00 for Fiscal Year 2005.
- b. Withhold from YMPO, federal funds and the obligation authority of federal funds \$223,037.00 in Fiscal Year 2005.
- c. Within 30 days after receipt of an invoice and a letter confirming the construction project has been awarded, advance the City thirty percent of the HURF funds.
- d. Within 30 days after receipt and approval of construction invoices at the thirty and sixty percent construction completion stages, advance the City HURF funds in the amount of thirty percent at each invoiced stage for construction.
- e. After final project review, and within 30 days after receipt and approval of construction invoices for the remaining ten percent of the project construction, advance the City HURF funds in the final ten percent amount of the \$720,000.00 for construction in Fiscal Year 2006.
- f. Withhold from YMPO, federal funds and the obligation authority of federal funds \$759,275.00 in Fiscal Year 2006.

### **III. MISCELLANEOUS PROVISIONS**

1 The State assumes no financial obligation or liability under this agreement, or for any resulting construction project. The City, in regard to the City's relationship with the State only, assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the City and that to the extent permitted by law, the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and reasonable attorneys' fees.

2. This terms, conditions and provisions of this Agreement shall remain in force and effect until completion of said project, except any provisions for maintenance shall be performed by the City for the useful life of the said project, unless assumed by another competent entity. Further, this Agreement may be canceled at any time prior to the award of the project construction contract, upon thirty (30) days written notice to the other party. It is understood and agreed that, in the event this Agreement is terminated by the City, the State shall in no way be obligated to maintain said project.

3. This Agreement shall become effective upon filing with the Secretary of State.

4. This Agreement may be canceled in accordance with Arizona Revised Statutes § 38-511

5. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

6. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

7. Non-Availability of Funds: Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph

8. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

9. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 South 17th Avenue, Mail Drop 616E  
Phoenix, AZ 85007  
FAX (602) 712-7424

City of Yuma  
City Administrator  
One City Plaza  
P.O. BOX 13014  
Yuma, AZ 85366-3014

10. Pursuant to Arizona Revised Statutes § 11-952 (D), attached hereto and incorporated herein, is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this Agreement and that the Agreement is in proper form.

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IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written

CITY OF YUMA

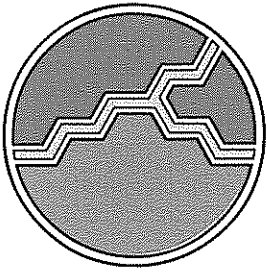
STATE OF ARIZONA  
Department of Transportation

By Mark S. Watson  
MARK S. WATSON  
City Administrator

By Dale Buskirk  
DALE BUSKIRK, Division Director  
Transportation Planning Division

ATTEST

By Brigitta M. Kuiper  
BRIGITTA M. KUIPER  
City Clerk



**City of YUMA**

**Office of the  
City Clerk**

One City Plaza  
P O. Box 13012  
Yuma, Arizona 85366-3012  
(928) 373-5035  
FAX (928) 373-5036  
TTY (928) 373-5149

**CERTIFICATION**

I, Brigitta M. Kuiper, do hereby certify that I am the duly appointed City Clerk of the City of Yuma, Arizona, and that the attached Resolution, R2005-34, is a true and correct copy of the document on file in the Office of the City Clerk.

Brigitta M. Kuiper, City Clerk

7.12.05

Date

RESOLUTION NO. R2005-34

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF YUMA,  
ARIZONA, AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT  
BETWEEN THE CITY OF YUMA AND THE STATE OF ARIZONA, TO  
PROVIDE HIGHWAY USER REVENUE FUNDS FOR 32<sup>ND</sup> STREET  
RECONSTRUCTION AND IMPROVEMENTS, BETWEEN AVENUE A  
AND AVENUE B**

WHEREAS, the City of Yuma (City) desires to reconstruct and improve 32<sup>nd</sup> Street, between Avenue A and Avenue B; and,

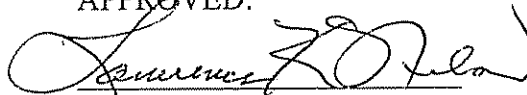
WHEREAS, the State of Arizona (State) has agreed to provide State Highway User Revenue Fund monies to further the City's project; and

WHEREAS, the State and the City wish to enter into an Intergovernmental Agreement allocating State Highway User Revenue Fund resources to the City, for certain activities related to the reconstruction and improvement of 32<sup>nd</sup> Street, between Avenue A and Avenue B, in accordance with approved plans and specifications.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Yuma, Arizona, that the City Administrator is authorized and directed to execute an Intergovernmental Agreement with the State of Arizona, as shown in Exhibit A, attached hereto and by this reference made a part hereof, to provide State funding for the said 32<sup>nd</sup> Street project.

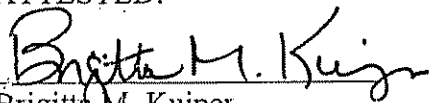
Passed and adopted this 6th day of April, 2005.

APPROVED:



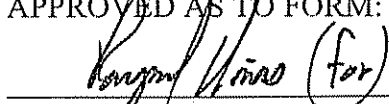
Lawrence K. Nelson  
Mayor

ATTESTED:



Brigitta M. Kuiper  
City Clerk

APPROVED AS TO FORM:



Steven W. Moore  
City Attorney

APPROVAL OF THE CITY OF YUMA ATTORNEY

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF YUMA, an agreement among public agencies which, has been reviewed pursuant to A.R.S. §§ 11-951 through 11-954 and declare this agreement to be in proper form and within the powers and authority granted to the CITY under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 7 day of April, 2005.

Ryan Weiss (for)  
City Attorney



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ARIZONA

TERRY GODDARD  
ATTORNEY GENERAL

CIVIL DIVISION  
TRANSPORTATION SECTION  
WRITER'S DIRECT LINE 602.542.8859

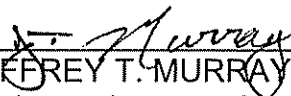
**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR04-0719TRN (**JPA 03-098**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: April 20, 2005

TERRY GODDARD  
Attorney General

  
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JEFFREY T. MURRAY  
Assistant Attorney General  
Transportation Section

JTM:dgr  
Attachment  
901442